
(1981) 03 OHC CK 0001

In the Orissa High Court

Case No : O.J.C. No's. 1032 of 1977, 121, 276 and 647 of 1978 and 1474 of 1980

Purnachandra Nanda and Others

APPELLANT

Vs

Secretary representing the Managing Committee, Ranihat High School and Others etc. etc.

RESPONDENT

Date of Decision : 18-03-1981

Acts Referred:

Citation : (1981) 51 CLT 521

Hon'ble Judges : R.N. Misra, C.J.; J.K. Mohanty, J

Bench : Division Bench

Advocate : R.C. Patnaik, P.K. Misra, G.A.R. Dora, R.K. Mohapatra, B.K. Behura, M.K. Mallik, R. Behera, K.K. Jena, B. Msea and L. Rath, for the Appellant; R. Mohanty, N. Patra, P.K. Lenka, G. Rath and R.K. Rath, for the Respondent

Judgement

R.N. Misra, J.—Within the town of Cuttack is located the Ranihat High School - an added educational institution within the meaning of the Orissa Education Act. Four teachers of the said school have filed these five different writ applications which we propose to dispose of by a common order.

(i) O.J.C. No. 1032 of 1977: Petitioner Purnachandra Nanda joined the School as an Assistant Teacher in August, 1970. While in service he was granted leave for taking the B. Ed. training and he returned to the School after completing the B. Ed. training in May, 1976. Petitioner was successful in the examination as would appear from the results published on 12-8-1976. From 13-8-1976 Petitioner was given the scale of pay admissible to trained graduate teachers. Petitioner was, however, retrenched on the ground that one section in Class-XI was abolished from the July session of 1976. On 11-8-1976, the retrenchment was recalled. Dispute arose between the Petitioner and the management and gradually the relationship became strained. Petitioner's salary for some period was withheld and by order dated 19-9-1977, Petitioner was placed under suspension pending a disciplinary proceeding. Petitioner filed the writ application on 14.12.1977 at a

time when the order of suspension was still in force. He had prayed for a direction to opposite party No. 2 to pay to the Petitioner his arrear salary for the period between May, 1977 and 19th September, 1977 i.e. till the order of suspension and for payment of subsistence allowance. By order dated 1-8-1979, the writ application was disposed of by directing:

We are told at the Bar, particularly by Mr. Kar, counsel appearing for the Secretary of the Managing Committee of the School, that payments are being made of subsistence allowance periodically. He also says that the arrear salary has also been disbursed. Mr. Dora says that he has no instruction Mr. Kar has no objection to our disposing of this writ petition with a direction that if the arrear salary has not been paid already, the same be disbursed to the Petitioner in due course....

After the aforesaid order, an application was made to reopen the case. By order dated 19.5.1980, the matter was reopened by consent of parties. As it appears, the management of the school has been taken over by the Inspector "of Schools after supersession of the Managing Committee of the School and the Inspector has rescinded the order of suspension. Petitioner has, therefore, been restored to duty. In the changed circumstances, Petitioner has claimed for two refuse, namely, (i) in view of the vacation of the order of suspension, Petitioner must be deemed to have been in service throughout and should be entitled to full salary after deducting the subsistence allowance which has been actually disbursed to him and (ii) Petitioner should be given the scale of pay prescribed for trained graduate teachers as held by the Inspector of Schools after the result of the Petitioner was out.

(ii) O.J.C. No. 121 of 1978: Petitioner Prasanna Kumar Misra was intermittently serving in the school as an Assistant Teacher between 1965 and 1970. In 1970 while serving as an Assistant Teacher, he tendered resignation to undergo B Ed. training and in 1971, he passed B. Ed. He joined the School with effect from 22nd September, 1972 as a trained graduate in the place of Sri R.K. Nayak (Acharya) who went on leave for undergoing B. Ed. training. In 1973, Sri Nayak returned after completing the training. According to the Petitioner, he was adjusted against a trained Intermediate post. In October, 1974, the Managing Committee decided that Sri Nayak (Acharya) would be adjusted against one of the trained graduate posts. Petitioner was paid his salary upto July, 1976 according to the scale of pay prescribed for trained graduate teachers. On 3-8-1976, Petitioner was informed that with the abolition of one of the sections in the school, Petitioner's service was no more required and from that period, Petitioner was not disbursed salary. Petitioner made several representations against the termination, but the Inspector of Schools by Annexure-10 dated 16-12-1977 ultimately intimated the Headmaster thus:

Shri P.K. Misra does not hold any post in the teaching staff of the School. He was appointed as an Assistant Teacher in the leave vacancy of Sri R.K. Nayak (Acharya) as per resolution of the Managing Committee meeting dated

13-9-1972. Therefore his appointment was specifically a leave-vacancy appointment. Consequent on joining of Sri R.K. Nayak (Acharya) on 28-6-1973 as per resolution dated 13-6-1973 of the Managing Committee, the appointment of Sri P.K. Misra stood automatically terminated, as there was no resolution of the managing committee adjusting Sri Misra against any post after 28-6-1973. The Headmaster has drawn unauthorisedly the pay of Sri P.K. Misra beyond that date. Moreover, consequent on abolition of an additional section in Class XI during 1976-77 there is automatic surplus in the teaching staff of the school. In consideration of the date of appointment, Sri P.K. Misra who is unauthorisedly continuing stands the juniormost. So the Government is unable to make payment to Sri Misra....

Thereupon, the writ application has been filed for quashing Annexure-10 and for a declaration that the Petitioner continues to be a teacher and should be paid his salary.

(iii) O.J.Cs. Nos. 276 of 1978 & 1474 of 1980: Petitioner Somanath Nanda who was a Matriculate having passed Kovid in Hindi joined the School as a Hindi Teacher on 17-9-1959. In January, 1966, he resigned but again joined the School as Hindi Teacher on 11-9-1967 where he worked till 31-7-1970. By then Petitioner had passed the Intermediate in Arts Examination and was absorbed as a trained Intermediate Teacher with effect from 1-8-1970 but was given the untrained intermediate scale of pay. In 1971, Petitioner graduated with honours in Education and also passed B Ed. Examination in 1973. In the following year he obtained his M.A. Degree. Petitioner maintains that he had been absorbed as a trained graduate teacher with effect from 1-9-1971 in terms of the resolution of the Managing Committee dated 17-10-1971. He also claims that he had been confirmed with effect from 15-5-1975. Petitioner's salary was withheld terms of the Order under Annexure-1/a and he was described as the junior most teacher working in the trained graduate scale Petitioner represented against the order. The Inspector of Schools by his letter dated 16-12-1977 (Annexure-8/a) informed the Headmaster thus:

It is not understood as to why the bill of Sri Somanath Nanda has been submitted even if it was intimated in this office memo No. 9209 dated 14-11-1975 that payment to Sri Nanda has been withheld pending reinstatement of Sri K.N. Mohapatra.

Petitioner thereupon filed the writ application for quashing the order of withholding of his salary as illegal and for a direction that his pay may be released.

During the pendency of the writ application in O.J.C. No. 276 of 1978, the Inspector of Schools who is in charge of the administration upon supersession of the Managing Committee passed an order on 8-9-1980 to the following effect:

Without prejudice to the subject-matter of the writ bearing O.J.C. No. 276 of 1978 filed by Sri Somanath Nanda, Assistant Teacher of Ranihat High School,

Cuttack, which is subjudice in the Court of the Hon'ble High Court, Orissa, Sri Somanath Nanda is hereby adjusted temporarily against the trained intermediate post lying vacant in the school from 19-8-1978 consequent on resignation of Sri Sankarsan Misra, Assistant Teacher of the school to make room for joining of Sri Kasinath Mohapatra on reinstatement.

Thereupon the second writ application (O.J.C. No. 1474 of 1980) has been filed by Somanath Nanda for quashing of the order under Annexure-1 and for treating the Petitioner as a trained graduate teacher of the School.

(iv) O.J.C. No. 647 of 1978: Petitioner Nityananda Swain after obtaining M.Sc. Degree in Mathematics joined the School as an Assistant Teacher with effect from 1.9.1966 and was treated as a Graduate Teacher without training and was paid remuneration according to that scale. He was relieved from the school for taking the B. Ed. training and after the course was completed, he returned to the school again on 15-5-1976. The results were, however, published on 12-8-1976. The Inspector of Schools by letter dated 16-12-1977 (Annexure-12) indicated:

Sri N. Swain is a trained graduate teacher holding a trained graduate post. Consequent on his passing the B. Ed. Examination on 12-8-1976, he is entitled to trained graduate scale....

Petitioner has filed this writ application for a direction to the opposite parties to pay him arrear salary in the trained graduate scale from 1-1-1977 till 20th of January, 1977, when he came to be suspended and for payment of subsistence allowance from 21-1-1977 at three-fourths of the salary. Suspension has been recalled during the pendency of the writ application and, therefore, Petitioner has claimed the entire salary minus the subsistence allowance actually disbursed.

All the four teachers who are before this Court claim to be adjusted against trained graduate teacher posts. They have also asked for arrear salary on such footing.

2. In course of hearing of these applications, Government order bearing No. XVIE/Boards/10/80(p)-53541 EYS dated 18.12.1980 has been placed before us. This letter deals with fixation of the standard staff for secondary schools. There is no dispute before us that if the principle indicated in this order is followed, so far as the Ranihat High School is concerned, there would be sufficient number of posts of teachers and all the four teachers who are before us can be accommodated against trained graduate posts. As we have already indicated, the management of the school is under supersession and the Inspector who is an opposite party before us in all these applications is the Special Officer in charge of the administration of the school. In view of the fact that the staffing pattern now approved accommodates all the teachers against trained graduate posts, we direct the Inspector of Schools to take immediate steps in terms of the Government order and adjust each of the four Petitioners before us in posts of trained graduate teachers. This should be done by end of May, 1981. With this direction, the main relief claimed in these applications is granted.

3. The orders of suspension in two cases have already been resigned. Therefore the claim of all the four teachers is to arrears of salary. The superseded Managing Committee is not before us, but the Inspector who is in charge of the administration has been heard through counsel. We are inclined to think that there has been a lot of confusion in the management. Teachers rendering service have not been paid; adjustment has been made of graduate teachers against lower posts; there is dispute as to whether service has actually been rendered by some teachers.

From the averments made we have no doubt that all the teachers before us have actually rendered service and they are, therefore, entitled to remuneration for the period they have served the institution. Since Government have taken over the financial liability for the entire period for which claim has been raised, we do not think it would be appropriate at this stage to refuse payment of salary to any teacher merely on the footing that there had been confusion in the management by the old Managing Committee. Poor teachers who have served should not go without salary. The inspecting officers should have been more careful control should have been exercised in good time and since Government has taken up the ultimate financial liability, proper check should have been made so as to avoid such a situation. We are of the view that in public interest and to keep up the morale of teachers, Government should bear the financial burden involved in the matter and clear the salary of the past period of those of the Petitioners who have not got their arrear salary. We have been told at the Bar by learned Government Advocate that most of the teachers could even be retrospectively adjusted against posts of trained graduate teachers. An interim report had been furnished by the Inspector in these writ applications when directed and therein such a statement has also been made. We therefore, direct the Inspector of Schools who is the Special Officer in charge to take appropriate steps also by end of May, 1981, to adjust these four teachers in vacancies that existed and regularise their service as against trained graduate posts. If there be any necessity to make any special sanction of a post for the past period. that may be done in terms of our direction by moving Government and obtaining orders so that each of the Petitioners would be paid trained graduate scale for the period during which they had actually become trained graduates and had served in the school.

4. At the hearing, counsel for the Petitioners had also asked us to fix up inter se seniority on the plea that unless inter se seniority was determined, the question of adjustment against trained graduate posts for the back period could not be done. In view of our direction that all the four teachers would be adjusted against trained graduate posts that does not really become material for the purpose of disposal of the writ applications. In none of the applications a prayer for fixing the inter se seniority had been raised. It is not known whether teachers serving in the school who are not before us may not be prejudiced if we examine the question of inter seniority. We have accordingly declined to go into an examination of that aspect. Now that the Inspector has taken over the

management, he should look into the question of inter se seniority in course of management and after giving reasonable opportunity to all the teachers fix up the inter se seniority, so that teachers may not take to litigations now and then and introduce a non-congenial atmosphere in the school by fighting among themselves over their service conditions. It is of paramount importance that educational institutions should maintain a soothing atmosphere for study and those who are engaged in building the future nation should be kept free to do their service with an appropriate spirit and not engage themselves in fighting out their own battles for existence or for maintaining the securing of their service or their status and position in the hierarchy.

The writ applications are disposed of with the aforesaid directions. There would be no direction for costs. Our order be communicated at the cost of each of the Petitioners to the opposite party-Inspector of Schools.

J.K. Mohanty, J.

5. I agree.